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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,756	12/08/2003	Mark J. Hampden-Smith	41890-01673	3463

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EXAMINER

KOSLOW, CAROL M

ART UNIT PAPER NUMBER

1755

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/730,756	HAMPDEN-SMITH ET AL.	
	Examiner	Art Unit	
	C. Melissa Koslow	1755	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 62-76 and 78-92 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 62-69, 71-76, 78-83, 86 and 87 is/are rejected.
- 7) ☒ Claim(s) 70, 84, 85 and 88-92 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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This action is in response to applicants' amendment of 18 July 2006. The amendments to the disclosure have overcome the objections to the disclosure and specification. The amendments to the claims and applicants' arguments have overcome the 35 USC 112 rejections and the art rejections based on U.S. patents 5,471,112; 5,881,924 and 5,725,800.

The amendment filed 18 July 2006 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Both occurrences "about" in the insertion made to page 47, line 17 and in the first insertion made to page 53. Both occurrences of "preferably" in the insertion made to page 58.

Applicant is required to cancel the new matter in the reply to this Office Action.

The parent applications and the originally filed disclosure do not include the above subject matter and thus it will be considered as new matter.

The disclosure is objected to because of the following informalities: Applicants gives two different paragraphs to replace that beginning at page 53, line 18. Appropriate correction is required.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 62-64, 68, 72, 73, 76, 78-81, 86 and 87 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6, 124-127 of U.S. Patent No. 6,180,029. Although the conflicting claims are not identical, they are not patentably distinct from each other because the plasma display panel claimed in the patent has the same structure as that claimed in this application and the phosphors in the patented claimed panel has the same compositions and an average particle and crystallite size and distribution which overlaps and falls within the claimed ranges. It is well known in the art that the excitation source in plasma display panels is xenon gas, thus the patented and claimed panels would be expected to contain xenon gas as the excitation source. Claim 6 teaches the amount of activator in $\text{Zn}_2\text{SiO}_4\text{:Mn}$. This amount falls within the range claimed in this application.

Claims 62-69, 71, 74 and 75 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 19-27 of U.S. Patent No. 6,197,218. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed fluorescent lighting element of the patent suggests that claimed in this application.

Claims 62-64, 72, 73, 76 and 78-83 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8-14 and 30-35 are of U.S.

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Patent No. 7,005,085. Although the conflicting claims are not identical, they are not patentably distinct from each other because the plasma display panel claimed in the patent has the same structure as that claimed in this application and the phosphors in the patented claimed panel has the same compositions and an average particle and crystallite size and distribution which overlaps and falls within the claimed ranges. It is well known in the art that the excitation source in plasma display panels is xenon gas, thus the patented and claimed panels would be expected to contain xenon gas as the excitation source. It is known in the art that the dopant used in barium magnesium aluminate is europium and the amount of the dopant is 0.02-15 at%.

Applicants' comments with respect to these rejections are noted. The rejections are maintained.

Claims 70, 84, 85 and 88-92 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa Koslow whose telephone number is (571) 272-1371. The examiner can normally be reached on Monday-Friday from 8:00 AM to 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo, can be reached at (571) 272-1233.

The fax number for all official communications is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cmk
August 9, 2006


C. Melissa Koslow
Primary Examiner
Tech. Center 1700